



The Politics of Justice 'from below': human rights defenders and atrocity crime trials in Latin America

Collins, C. (Accepted/In press). The Politics of Justice 'from below': human rights defenders and atrocity crime trials in Latin America. In C. Garbett, & S. Wastell (Eds.), *Transitional Justice Beyond Blueprints: Ethnographies and Case Studies* (pp. 1-16). Routledge.

[Link to publication record in Ulster University Research Portal](#)

Published in:

Transitional Justice Beyond Blueprints: Ethnographies and Case Studies

Publication Status:

Accepted/In press: 01/06/2018

General rights

Copyright for the publications made accessible via Ulster University's Research Portal is retained by the author(s) and / or other copyright owners and it is a condition of accessing these publications that users recognise and abide by the legal requirements associated with these rights.

Take down policy

The Research Portal is Ulster University's institutional repository that provides access to Ulster's research outputs. Every effort has been made to ensure that content in the Research Portal does not infringe any person's rights, or applicable UK laws. If you discover content in the Research Portal that you believe breaches copyright or violates any law, please contact pure-support@ulster.ac.uk.

The Politics of Justice ‘from below’: human rights defenders and atrocity crime trials in Latin America

Cath Collins

This chapter discusses prosecution of past atrocity crimes as a site of political action that increasingly crosses state-non-state and intergenerational boundaries in post-authoritarian and post-conflict Latin America. It shows how the structure and politics of the formal justice field in the region have been made and re-made by relatives, survivors and others pressing for investigation and prosecution of enforced disappearance, extrajudicial execution and torture. In doing so, it contributes to understanding of how close attention to micro- and meso-level activist dynamics and biographies can illuminate interstitial aspects of post-authoritarian politics, complementing analyses focused on structural change, institutional culture, and/or the logic and drivers of collective action or movement politics. Organisation around the prosecution of past atrocity crimes has variously served as a means of holding perpetrators to account, constructing new citizenship relationships with the post-authoritarian state, and colonising spaces of purposive collective action at both state and (sub) regional level. In the transitional justice field, the supposition that survivors of past political violence, and relatives of absent victims of such violence, do not necessarily highly value formal justice against its perpetrators seems remarkably persistent. It is true that prosecutions, and related forms of judicialisation,¹ can ‘crowd the field’, handing centre stage to human rights lawyers, judges, and other practitioners of the arcane arts of formal retributive justice. On the other hand, non-prosecutorial measures such as truth-telling, reparations or reform are not invariably or inherently more victim-centred, more ‘humanitarian’, or more empowering than trials. This chapter shows how perpetrator prosecutions, like other forms of transitional justice, can be built ‘from below’, representing at least in part the outcome of deliberate, empowered, and self-empowering strategic action by survivors, relatives and other actors. It discusses at least two generations of such actors, arguing that they constitute ‘accountability entrepreneurs’, a notion which borrows from Elizabeth Jelin’s well-known discussion of memory entrepreneurship. These accountability actors² do not just lobby from the

¹ Courts are now regularly used for transitional justice matters other than criminal prosecution, including setting or challenging the limits to secrecy surrounding official state archives; questioning sufficiency of reparations, or lobbying for or against permission to install memorials in public space. See C. Osmo (ed.) *Judicialização da Justiça de Transição na América Latina*, PNUD/RLAJT: Brasília, 2016 for multiple examples from Brazil. The Inter-American human rights system has also acted and ruled on a broad range of truth, reparations and memory questions. See F. González, *El Sistema Interamericano de Derechos Humanos*, Valencia: Tirant lo Blanch, 2013; O. Parra Vera, ‘La jurisprudencia de la Corte Interamericana respecto a la lucha contra la impunidad’, *Revista Jurídica de la Universidad de Palermo*, 13.1, 2012 or K. Salazar and T. Antkowiak, (eds.), *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington, DC: DPLF, 2007.

² In the book *Post-Transitional Justice* (C. Collins, *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador*, University Park, Penn State Press, 2010) I used the term ‘accountability actor’ to refer to some of the same individuals and dynamics analysed here. However, the adoption in this chapter of the notion of ‘accountability entrepreneur’ is designed to foreground the creative, protagonistic and flexible (shifting) aspects of this identity to which Jelin also alludes in discussing actors in the memory field.

sidelines for legal action against perpetrators. Having often fought at great personal cost to open up the prosecutorial field, today they actively occupy it as claim makers, de facto adjunct prosecutors,³ and/or justice system professionals. The chapter therefore offers a nuanced portrayal of relatives and survivors, debunking the myth of their predominantly subaltern status and showing how some have been intimately and creatively involved in the construction and maintenance of strategic accountability alliances which stretch across generational and state-civil society divides.

Accountability Entrepreneurship in Latin America

This chapter draws on almost twenty years of close participant observation of transitional justice dynamics in Latin America. It takes an actor focused approach, arguing that ‘who does’ transitional justice is a significant and often overlooked factor in understanding why, when and for how long it is done at all. Specifically, I observe that agency, knowledge and expertise around the usefulness of otherwise of formal justice to protect victims and/or promote accountability are today found in a multiplicity of spaces in the Latin American region, including the one commonly categorised as ‘from below’. State structures, often the main originator of the past violence whose legacy is to be grappled with, are another such space, and accountability is today frequently co-created by actors who inhabit the interface between state and non-state spaces, or migrate between the two. I home in the identities of legal activist, human rights lawyer, and justice system operator in order to demonstrate that the formal justice impulse has survived and/or re-emerged in post-authoritarian and post-conflict largely through the conscious desires and deliberate actions of these actors.⁴ I show how each of these identities is available to, and inhabited by, survivors and relatives as well as other individuals.

I characterize all such actors as ‘accountability entrepreneurs’ –defined as persons versed, schooled, and personally invested in the lived realities of crafting and sustaining mid- and long-term justice responses to past political violence in and through the courts. They have emerged from places not easily mapped onto the artificial binary of ‘subaltern’ versus ‘elite’ status; nor onto a North-South axis. Individuals from the civil society human rights community and (now) from state institutions, located in various countries and regions and indeed often circulating between them, have created ongoing trans-regional and trans-generational alliances around formal accountability in Latin

³ Many Latin American legal systems allow relatives, victims and other directly interested parties to initiate and take an active part in criminal investigations in that capacity alone; while others have done so as qualified legal professionals.

⁴ See inter alia E. Skaar, J. García-Godos and C. Collins, (eds.), *Transitional Justice in Latin America: The Long Road from Impunity toward Accountability*, London: Routledge, 2016 for a region-wide survey of transitional justice trajectories in 9 countries, compared and contrasted in longitudinal perspective and demonstrating a general trend towards a recent uptick in formal justice activity, typically after some years of post-transitional hiatus. The book’s country studies also identify some particularly prominent individual protagonists.

America.⁵Associations based on shared or congruent interests, strategies and values have come to constitute networks of pro-accountability action with both state and nonstate components. Thus for example the Latin American Transitional Justice Network, www.rljt.com, has members who are public employees and others who are civil society activists, constituting an important crossover affinity space for the pooling of expertise and energy in this issue area.

Some relatives, survivors or sympathisers 'colonise' state space through employment, while reformed state structures also produce professionals who are prepared to engage with transitional justice needs in general and prosecution matters in particular. Claudia Paz y Paz, the chief public prosecutor of Guatemala until 2015, rose to prominence via her determined action in pursuing the prosecution of former military ruler Efraín Ríos Montt for genocide. In Brazil, state prosecutor Marlon Weichert and then-Amnesty Commission president Paulo Abrão spearheaded many recent efforts to dilute and overcome impunity for dictatorship-era crimes. Judge Yassmin Barríos in Guatemala, like judge Mariana Mota or prosecutor Mirtha Guianze in Uruguay, were at the vanguard of late accountability efforts, often at the price of being subjected to personal opprobrium or professional ostracism.⁶ The passage of time, and the operation of lifecycle dynamics, has meanwhile given rise to one or more new generations of young people who choose to engage with the accountability issue, or may find themselves called upon to do so simply because they work in relevant state institutions. Thus for example mainstream state forensic services in – inter alia – Chile, Peru, Brazil and Paraguay have developed special units to carry out forensic procedures, including exhumations, in human rights-related cases, sometimes because the remains of victims of disappearance have been located in the course of official investigations.⁷

Accountability Networks and Enclaves

Alliances among and between these accountability entrepreneurs and their networks shift, evolve and sometimes dissolve. Tensions, disagreements and absolutely irreconcilable views about the when, whether and wherefore of prosecuting past

⁵ Individuals whose initiation into accountability-related human rights work came through personal lived experience, and who were later forced to leave their countries of origin only to become international figures in the field, include Juan Méndez, from Argentina, and José Zalaquett, from Chile. Both played key roles in significant international human rights NGOs during exile, or subsequently. Roberto Garretón, Elizabeth Jelín, Martín Abregú, José Miguel Vivanco, and Ariel Dulitzky are amongst the many other individuals from the same two countries who have had an undeniable impact on the international stage. North-South solidarity networks, which often consciously strove to create lasting international ties, also had an impact. The recent documentary film 'Granito' depicts the ongoing professional and personal ties that unite various North-and-South born and based human rights lawyers and activists, due to shared early experiences in or around 1980s Guatemala. In more recent times, increased geographical mobility and the end of dictatorships or open conflict also mean that accountability actors and scholars of Northern origin can and have migrated permanently or temporarily to Latin America, reversing the direction of the dictatorship-era enforced exodus.

⁶ Abrão recently (July 2016) became Secretary General of the Inter-American Commission on Human Rights.

⁷ The Latin American region has been a notable point of origin of the modern-day field of specialised forensic anthropology around human rights atrocity. See a general history of the field provided by A. Rosenblatt, *Digging for the Disappeared: Forensic Science after Atrocity*, Stanford: Stanford University Press, 2016.

atrocities are certainly not unknown.⁸ Political or ideological appropriation of instrumentalisation also occurs, whereby human rights framings are used as a substitute for now-abandoned or unpopular revolutionary political language and rhetoric. The chapter does not take a normative position, nor aim to present an uncritical celebration of pro-prosecutorial activism. Rather, I argue that activity in present-day Latin America in favour of accountability for recent,⁹ past, grave human rights violations has created new, hybrid kinds of human rights actor or human rights-relevant actor, in the context of new state structures. Democratising trends, efforts and moments in the region, however imperfect or contradictory, have opened spaces within the state that previously oppositional, excluded or persecuted groups see as somehow ‘theirs’. When individuals closely associated with the origins of the modern human rights movement move into such spaces, alongside others attracted by the rights and/or justice idiom, I argue that these spaces can usefully be thought of as emerging ‘accountability enclaves’,¹⁰ created and sustained as they are by accountability entrepreneurs. Only rarely have these enclaves been celebrated, feted or actively promoted by the states within which they operate. Sometimes tolerated or overlooked by broader state structures, accountability enclaves have more often been disapproved of, discouraged and opposed, particularly if their actions provoke tension with the present-day armed forces or reaction from still-powerful individual perpetrators. In such circumstances, accountability professionals have often sought support from one another and from non-state groups with which they have affinity, reinforcing a notable trend towards regionalisation, internationalisation, and operation across the state-non-state divide. In the remainder of the chapter I discuss the emergence and operation of such enclaves, from a starting point that privileges personal and activist rather than institutional histories. I draw examples from Chile, the domestic setting with which I am most familiar, while acknowledging that equally rich narratives of and about other countries in the region could and should be constructed. The selection is based on personal expertise, familiarity and accessibility, rather than sampling: I do not aspire to comprehensiveness or even strict representativeness. Nonetheless, longstanding personal and professional experience informs my own deep conviction that these micro-histories, profiles and dynamics have close equivalents elsewhere in the region, illustrating a broader phenomenon of society-state accountability alliances, with a regional or trans-regional component.¹¹ Accordingly, after discussing certain transversal

⁸ See C. Collins, ‘Prefacio’, in Osmo (ed.) *Judicialização*, 2016, 13-21.

⁹ Roughly speaking, concentrated around the 1970s and 1980s experiences of ‘counterinsurgency wars’ or National Security regimes deployed in efforts to annihilate armed actors and/or movements for social change.

¹⁰ The term is borrowed and adapted from Manuel Antonio Garretón’s discussion of ‘authoritarian enclaves’ in the transition-era Southern Cone.

¹¹ Regionalisation and internationalisation are moreover two-way: ideas, initiatives and people have travelled in each direction. One example is that of post-dictatorship Argentina, which in the early 1980s produced a notable cluster of figures who later became prominent in international human rights settings. These include, as already mentioned, Martín Abregú, of the Ford

issues or themes, I provide empirically-grounded portrayals of actually-existing legal activists, human rights lawyers, and justice system operators, three categories of accountability entrepreneur who populate the accountability actor field in present-day Chile. While all of the usual caveats surrounding selection undoubtedly apply, these characterisations are unashamedly illustrative rather than representative. They serve to demonstrate the concept of accountability entrepreneurship and describe its field of action. Before exemplifying the three categories through consideration of these real profiles and biographies, I discuss two main crosscutting themes: the porosity of state-nonstate boundaries and identities; and age and generational replacement, in particular as they affect identity and self-reported motivation.¹²

Accountability Entrepreneurs in Action

The combination of two dimensions or axes of analysis – mobility across the state-civil society boundary; and inter and cross-generational change and continuity - offers insights into how private individuals aggregate to become collective actors, on the one hand; and how the cultures and behaviours that take place within accountability agencies and institutions are made and remade over time by internal and external interpolation, on the other.

As far as the state-nonstate boundary is concerned, pro-accountability alliances between public officials and civil society – such as between a special prosecutor and members of a relatives’ association, or a forensic anthropologist and a family – often visibly go beyond the ordinary, transactional, relations of petition and response between citizens and bureaucracy. They possess strong affective components, producing a sense of identification in which participants from both sides recognize in-group loyalties or affinities that transcend the state-nonstate; professional-personal, divide.¹³

The origins of this porosity are connected to dimension two, generational change, since accountability enclaves are populated and replenished in various ways. One is the ‘circulation’ between the two spheres - state and civil society - of what I will call ‘first

Foundation; Ariel Dulitzky, president (till late 2016) of the UN Working Group on Enforced and Involuntary Disappearances; and Luis Moreno Ocampo, first prosecutor of the International Criminal Court.

¹² As mentioned above, the chapter is informed by longstanding participant observation. In identifying these two themes, I draw on this experience as well as a wealth of interviews built up over a decade and a half of practitioner and academic engagement. Some of these interviews were carried out for particular bounded pieces of research studying relatives’ and professionals’ views and actions around enforced disappearance. Interviews conducted for those projects are cited here only where interview subjects explicitly authorised such wider use. The author is grateful to Dr. Iosif Kovras for authorisation to cite interviews carried out on his behalf, in 2016, for a forthcoming book project.

¹³ Participants from state agencies frequently express such sentiments in terms including ‘going beyond what the job requires’, or ‘feeling more at home’ with relatives or human rights groups than with peers who do not appear to appreciate the special demands, nature or urgency of their work. Participants from civil society groups report ‘sympathy’ with those acting in an official capacity, expressed occasionally as a greater willingness to be flexible or circumspect in expressing the full weight of demands, in the interests of cultivating or preserving valued relationships and postholders. This fellow feeling is enhanced when, as is far from uncommon, state interlocutors are known to activists as also relatives or survivors.

generation' human rights defenders. These people were or became opposition activists, operating in a human rights idiom, during periods of state repression or counterinsurgency violence. Irrespective of their previous elite or subaltern identities, such people were now subjected to the shared experience of being placed on the 'wrong side of the law', operating in precarious and often semi-clandestine conditions and under implicit or explicit threat. Experiences of personal or family victimisation led some of these individuals into exile: diaspora communities became part of an increasingly internationalised human rights movement, and individual human rights defenders circulated between Latin American countries suffering repressive violence and other regions of the world.

When democratic transitions began and state structures began to be repopulated, some of these same individuals returned to their countries of origin and became recognised human rights professionals within state structures. Others took up political or technical appointments within apparently unrelated state services or institutions, that would become of direct future relevance when accountability questions resurfaced.¹⁴ Still others took up academic or other third sector posts, but were close at hand when decisions regarding legacies of the past, or future oriented human rights policy decisions, had to be taken. Another group continued to be primarily identified with civil society, whether through relatives' associations or the remnants of repression-era human rights organisations.¹⁵ In time at least some of those people matured, whether through acknowledged professional routes or simple progression in informal leadership roles, to claim a space as privileged interlocutors or channellers of rights claims to the state.¹⁶

The presence of former colleagues and 'comrades' in posts of influence within the state, while not exempt from tensions, facilitated dialogue between the two constituencies in the new democratic era. A shared sphere of reference and action was created even where immediate responses to past crimes were not what relatives' groups had hoped for. This dynamic of shared experience within a single survivor generation which later disperses into state and nonstate roles militates against any simplistic assumption that portrays victims as inevitably and always subaltern outsiders, or state actors as invariably uncomprehending of victims' experience. In practice, anyone familiar with the current Latin American accountability stage cannot fail to recognize many names and faces who have operated at different times as victims, relatives, survivors, activists,

¹⁴ One illustrative example will have to stand for many: Dr Patricio Bustos, a survivor of Chile's notorious Villa Grimaldi concentration camp, took over the national direction of Chile's official Forensic Medical Service in 2006, at a time when the service's technical expertise was becoming increasingly key in judicial investigation of past crimes of repression.

¹⁵ Eva and Victoria, interviewees discussed below, are key examples, and the author is aware of many others.

¹⁶ The tendency to assume that human rights organisers, particularly if their primary identity is that of relative or survivor, will come from subaltern backgrounds is often misplaced. In the Southern Cone of Latin America, repression often targeted middle class left-wing activists, of urban origin and with high levels of formal education and political experience.

professionals and decision makers in this issue area, and/or who exercise various of these identities or roles simultaneously.

Latin America's accountability-related organisations, structures and agencies contain at least one other clearly distinguishable category: that of a new generation of human rights professionals or activists, whose encounter with accountability issues is through indirect accounts of recent history and its effects. In between is a whole cast of students, young professionals and potential activists who grew up with more, or with less, direct lived or immediate family experience of repression.¹⁷ Thus we see how negotiation of the state-nonstate divide, and the transmission (or not) of intergenerational memory, intimately affect entrepreneurship in particular settings. I now turn to examples from Chile, discussing how state-civil society divides and generational change operate on the ground across three possible classifications of accountability actors.

Legal Activists

This category potentially includes all those who advocate, campaign and act for or against the use of formal law and its structures to adjudicate accountability-related issues. Nonetheless, here I limit the category to consideration of relatives or survivors who have mobilised in favour of criminal and-or civil claim-making, against individual perpetrators or against the state. While some, as we will see, also (today) hold state or state-funded employment, consideration of activists who went on to become justice system operators directly acting in favour of accountability is largely confined to the next two sections (dealing, respectively, with human rights lawyers and with other justice system operators).

Eva and Victoria¹⁸ are at the same time survivors, relatives and witnesses, exemplifying the multiple identities typical among relatives in politically mobilised contexts such as the Chilean one. Both were protagonists in their own right of the left-wing political movements of the 1970s, as well as being close relatives of victims of disappearance. Eva now plays a central role in running the memory site operating at the former clandestine detention centre where she and her now-disappeared partner were held and tortured during the early 1970s, before she was forcibly exiled together with their infant daughter. Victoria, a longtime mainstay of one of Chile's major dictatorship-era human rights organisations, today continues to campaign on behalf of a disappeared sibling. After having worked for some years to help establish Chile's national Memory

¹⁷ See C. Collins, 'Cause Lawyering in Chile', Working Paper, Lawyers. Transition and Conflict project, Belfast: Queens University Belfast, 2015. At least in Chile, the experiences range from individuals who grew up in exile but returned, in some cases without their parents, specifically to take part in the accountability enterprise.

¹⁸ Names have been lightly pseudonymised, as a blanket decision to respect the preferences of some interviewees, but no identifying details of cases have been removed or omitted unless explicitly requested.

Museum, she now holds a 'day job' in an administrative role at the state forensic service, in a specialised unit which helps locate and identify victims of disappearance.

Both began or enhanced their formal legal activism around their own family members in the late 1980s and early 1990s. This was a time when returning exiles – including Eva – brought with them fresh perceptions about what should be demanded from the domestic justice system. They also brought, perhaps, a relative lack of inhibition, fed by some years living in freer environments, mutually nourished by local and international solidarity dynamics. Eva reports that on her return from exile, “groups of us [returnees] would get together, to plan what we could do”. Victoria adds: “... we were focused right from the beginning on pushing for trials”.¹⁹ The two joined forces, making common cause with a ‘maverick’ (ie sympathetic) investigative magistrate assigned to the case of Eva’s husband. Interestingly, they attribute part of the magistrate’s willingness to her gender: “she was an outsider, like us...” (Eva, interview, op.cit.) Equally interestingly, another part of Eva’s explanation for the modest success of this early case counteracts the ultimately self-congratulatory apprehensions expressed by some human rights lawyers about professionals’ appropriation of the legal field: “I got in a lawyer who wasn’t a human rights lawyer, [and] so wasn’t pre-emptively intimidated by the [1978] amnesty law. He didn’t know that certain things were supposedly impossible, so I just told him to do them, and he did”. Perhaps the most striking early achievement of Eva and Viviana was to persuade a crusading police officer to share their zeal. The judge had traced a key former agent, and notorious torturer, to a neighbouring country, from where she was unable to officially procure his return other than by formally initiating probably lengthy extradition proceedings. In an unprecedented twist Eva, Viviana, the police officer assigned to the case, and two human rights lawyers, travelled together to Brazil to discuss with authorities there the possibilities of having him expelled, thereby in effect securing his return to Chile. His subsequent testimony incriminated himself and many others – though not, directly, those responsible for Eva’s husband’s case, as she ruefully acknowledges: “we were maybe naïve... we thought if we could only see him face to face, he’d tell us what we needed to know.” The moral Eva now draws from that early story is one that emphasises the value of empowered, sustainable activism: “you have to be in the courts, keep on top of them, make them see you’re not going away any time soon. Judges, lawyers: they’re like doctors – they think they know it all. But taking the initiative means you don’t buy into the role of “victim”.”

This defiant declaration comes from a relative who is also a direct survivor, and whose statements and actions transmit a high level of self-confident autonomy and agency. Emma and Juan Pablo, second and third-generation relatives respectively, have more complex relationships to their own identities as direct or indirect survivors. Both

¹⁹ Author interviews (and author’s translations), on 17 January 2013 (Victoria) and 22 February 2013 (Eva).

consciously took a position with respect to their own family histories rather later in life than Eva was forced to do; and each takes a somewhat different view of the importance of pressing for prosecution. Juan Pablo, grandson of a victim of disappearance, gradually came to own his family history- of which he had always been aware - due to a community memory project, whereby he and other grandchildren, together with other extended family members, designed and created a personalised tribute to their lost loved ones. Perhaps as a result, his own particular engagement has continued to be principally through the memory idiom. Seeking out international study opportunities that are exceedingly rare for someone of his background, he managed to study under the tutelage of regional memory expert Elizabeth Jelin (in Argentina), before taking a job as network co-ordinator at a Chilean memory site not directly related to his own family experience. It is interesting to speculate how far it may be significant that this 'leave-and-return' dynamic evokes, to a lesser degree, the exile experience of earlier generations. Regarding justice actions, Juan Pablo's view is that "the struggle for memory makes [more] sense, because for a grandchild, it's difficult to be involved in a legal complaint (...) Memory is an area where you feel you can make more of a contribution, or do more".²⁰

While Juan Pablo's views are perhaps coloured by never having known his grandfather in person, Emma was 7 years old when her father, single parent to herself and her older brother, was disappeared. Emma grew up with the unvoiced fantasy that her father might one day return, and perhaps as a result was more distant than her activist brother from visible campaigns for justice, as if to campaign for trials would somehow mean to acknowledge the inevitable: "the [relatives'] association was always focused on trials, punishment, and justice... I wanted to find him. It wasn't until very recently that I gave up (...) I'm not sure you'd call it giving up hope, but I stopped thinking that I was going to find him alive...".²¹ Only recently –since the birth of her own child – has Emma taken more of a role in the investigation concerning her father, but she is ambivalent regarding the value of the judicial process as a whole: "there's no denying that there have been trials, but I don't know that I feel there's been justice ...".

This younger generation of relatives or survivors may, then, be at least in part less centred on formal justice as their only or prime transitional justice concern; and/or may seem to have less faith in the power of prosecution to deliver a meaningful or even just outcome.²² This may appear in one sense counterintuitive, given that members of this generation have lived a greater proportion of their adult lives alongside a judicial system

²⁰ Juan Pablo, interview, Santiago, 29 April 2016.

²¹ Emma, interview, Santiago, 20 April 2016.

²² This notion, while impressionistic, is drawn not only from the two interviews cited but from additional interviews and acquaintance. It also proceeds from the informed judgement of Juan Pablo, and of another younger generation relative with a similar background, both of whom have years of accumulated experience working in outreach and education posts targeted, inter alia, at third generation relatives.

that is at least structurally receptive to accountability claims. It may however also be the case that older generation relatives and survivors, whose memories are of a collusive or actively hostile justice system, are somewhat readier to positively value even such slow and limited change as has come about.

Human Rights Lawyers

‘Human rights lawyer’ is, for Chile, a particularly capacious category. It conjures multiple well-known examples of personal constancy and heroism stretching back to Chile’s dictatorship era and through to the present. Along with the image of relatives’ association members, with their placards and implacable demands, human rights lawyers form perhaps the most enduring icons or tropes of the 40 plus years of repression and resistance of the Chilean regime. This prominence of the legal profession has quite concrete origins and explanations, amongst them, the search for a non-partisan, respectable identity from which to oppose regime atrocities without subscribing to opposition politics.²³ What is less often observed is the extent to which ‘human rights lawyer’ is neither a static category, nor entirely distinguishable from that of relative, survivor, or (more recently) state justice system operator.

During the dictatorship itself, relatives and survivors including Carmen Hertz, well-known partner of a disappeared political leader, turned their existing or acquired legal expertise to the task of formally combating the regime’s atrocity crimes. Many did so through a specially crafted Catholic Church entity, the ‘Vicaría de la Solidaridad’, which amassed comprehensive independent records now routinely used for criminal investigations. After transition, several of the Vicaría’s best-known legal operators went on to colonize a space within the state. They turned a relatively obscure truth commission followup body, colloquially known as the ‘Human Rights Programme’, into the functional equivalent of a specialised state prosecutorial office for atrocity cases.²⁴ Today, the Programme is perhaps the most visible window into an intriguing phenomenon of generational replacement. Partly as a conscious strategy, and partly in natural harmony with the evolving profile of applicants for vacancies on the legal team, the current legal team markedly contains very young (under 30 years old) lawyers alongside more experienced Vicaría hands.

The old/ new divide does not necessarily denote the presence or absence of personal links with repression: not all Vicaría personnel directly suffered repression, and some

²³ See discussion of the Vicaría de la Solidaridad in C. Collins, *Post-Transitional Justice*, 2010, and A. Wilde, ‘The Institutional Church and Pastoral Ministry’, in Wilde (ed.), *Religious Responses to Violence: Human Rights in Latin America Past and Present*, Notre Dame: University of Notre Dame Press, 2015. See also C. Collins, ‘Cause Lawyering in Chile’, 2015 on Chilean legalism in general, and the recent history of the Chilean legal profession.

²⁴ See C. Collins, ‘Human Rights Trials in Chile During and After the “Pinochet Years”’, *International Journal of Transitional Justice*, vol. 4 no. 1, 2010, 67-86.

younger recruits do refer to personal biographies to explain their interest in this work.²⁵ In general, however, direct personal experience becomes less of a ubiquitous feature in newer age cohorts, and other predisposing factors take over.²⁶ The younger Programme lawyers tend to see themselves as human rights professionals by vocation, likely to move on in future to work on other issues, all within a broad human rights field.²⁷ For the present, their stated motives for believing that prosecution of past atrocity crimes is purposeful and meaningful range from personal and moral to consequentialist societal rationale. The latter include the notion of putting right historical wrongs or laying the foundations for a consistent commitment to rule of law principles, whatever the issue at hand.

If this emergence of young lawyers who actively wish to work in a state ‘enclave’ that operates solely around past accountability issues is surprising to some, an additional and more recent development is even more striking. The relatives’ association AFEP,²⁸ which was for many years the preserve of a shrinking group of female activists trying to press for truth and justice action, has since 2010 taken on a new lease of life. Once a week, the group’s headquarters now echo with the busy sights and sounds of a large group of students, debating case strategy and checking on the week’s developments in dozens of criminal complaints brought by the association in recent years. This group constitutes AFEP’s legal team, made up entirely of student volunteers recruited from the capital’s university undergraduate law schools, plus one (unpaid) qualified lawyer.²⁹ This apparently precarious, but in fact entirely functional, arrangement has been responsible for various of the boldest and best-known accountability initiatives of recent years, and is currently combating perpetrator requests for clemency in the country’s Constitutional Court. Students are recruited once a year through word of mouth or social networks, and in the years that the arrangement has been in place, the spread of institutions of origin of the students has widened to incorporate students from traditionally conservative private universities. Meanwhile, the self-ascribed motivations of the students have also broadened from personal or ideological affinity to include notions of the national interest or a historical debt owed to families.

AFEP’s sole qualified senior lawyer, already mentioned, has a compelling personal narrative. Having grown up in exile, he chose to study law in Europe – and then to travel solo to Chile, with his parents preferring to stay in their adopted home – with the specific

²⁵ In depth interviews carried out in 2015 with eight Programme lawyers, and personal informal conversation with a dozen more, 2014-present. At least two young Programme lawyers are immediate family members of victims of disappearance or extrajudicial execution.

²⁶ These included an iconic TV series, broadcast in 2011 and 2014, relating fictionalised stories, based on the Vicaría’s files, revolving around a human rights lawyer and a social worker who oppose the regime.

²⁷ Multiple interviews, Santiago, Temuco and Valdivia, Chile, 2015-16.

²⁸ Agrupación de Familiares de Ejecutados Políticos.

²⁹ Affiliated to the Communist Party, often associated with vigorous accountability activity.

aim of contributing to present-day accountability. This author is aware of other individuals who have followed a similar trajectory, suggesting perhaps that a new variant of the 'post-memory' generation, born and/or brought up in the global North and choosing to return South as adults, is emerging. Such individuals are taking a direct hand in accountability, often showing considerable commitment, to the point of having shaped their studies accordingly and left behind their family of origin. One interviewee referred to this generation (her own) as a 'bridge generation', connecting the norms, experiences, knowledge and innovative strategizing (entrepreneurship) of more than one culture, and more than one age cohort. It will be of considerable interest to observe more closely, over the coming years, how if at all the emergence of this type of human rights lawyering as a civic and potentially public professional identity, rather than innately oppositional or contestatory, affects prevailing national lawyerly practice and/or may give purchase to some version of the notion of 'cause lawyering'.³⁰

Justice System Operators

As criminal prosecution of past crimes has grown, auxiliary justice system personnel such as detective police officers or technical (forensic) staff are involved in increasing numbers in accountability work. In Chile, they operate under the direct supervision of investigating magistrates and are the principal protagonists of interaction with relatives, witnesses and survivors, collecting evidence, seeking out testimony, and tracing people, documents and leads relevant to long-ago crimes. A recent training event, co-convened by this author, gathered together over 100 such justice system operators who currently work directly, and for the most part full time, on cases of dictatorship-era disappearance and extrajudicial execution.³¹

The direct participation of relatives and survivors in these roles is sometimes limited and/or firewalled, for reasons which include potential objections from defence lawyers keen to challenge the validity or neutrality of investigations.³² Nonetheless, some relatives, survivors and other past or present human rights activists do operate in supporting or central roles within these institutions: viz. Victoria, discussed above. Moreover, frontline justice system operators who have acquired particularly strong personal and professional commitment to accountability work have found creative ways to overcome the compartmentalisation and hierarchical structuring that is commonly found in everyday police, justice and state bureaucracy operations. At the

³⁰ See, inter alia, A. Sarat and S. Scheingold (eds.), *Cause Lawyers and Social Movements*, Stanford: Stanford University Press, 2006, or Y. Dezalay and B. Garth (eds.) *Lawyers and the Construction of Transnational Justice*, London: Routledge, 2012.

³¹ The author designed and ran the training, carried out under the auspices of the British Council Newton-Picarte project 'Developing Chile's National Institutional Worktable for the Disappeared', Servicio Medico Legal, Chile and Ulster University, UK. A rapporteur document and presentation materials, sources for the observations which follow, are on file with the author. Participants came from the detective police; state coroner and forensic service; uniformed and detective police; investigative magistrates' legal clerks (actuaries), and even from the national registry office, whose assistance is regularly needed to help locate witnesses or suspects.

³² Recruitment and entry barriers also play a part.

abovementioned training event, for instance, an interdisciplinary team formed of junior police, forensic, civil registry and judicial staff explained how they had created an unprecedented inter-service collaboration to speed identification work in a particular episode of disappearance. Asked to what they attributed the relative success of the endeavour, the group unanimously named their own youth, the willingness of the judge in charge to delegate, and their own creative use of social media to circumvent cumbersome regular channels of inter-service communication.

Similarly entrepreneurial behaviour, this time uniting justice system operators with human rights lawyers and relatives – that is to say, all three categories of actor discussed in this chapter – was initiated by the state Human Rights Programme in approximately 2013. In order to overcome a particular dearth of information in cases involving extrajudicial executions from the earliest days after the 1973 coup, the Programme initiated a monthly ‘cold case clinic’ where detectives, relatives’ association members and case lawyers would sit down together. Brainstorming and pooling ideas, information and anecdotal evidence about where information could be found, the clinic’s meetings produced novel investigative avenues including requests to TV stations and the country’s national Museum of Memory for audio or video archive footage, and the construction of an enormous wall map, tracing out the routes of particular 1970s-era military operations onto contemporaneous Santiago street plans.

Construction of alliances across the investigator-activist divide also occurred in earlier transitional moments: see for instance the discussion of Eva and Victoria’s extraordinary visit to Brazil in the company of a serving police officer, above. The same officer, recently retired, has become something of a legend within the force and to younger colleagues in the human rights detective brigade. On a subsequent occasion, he took vacation time in order to carry out weeks of unofficial surveillance in a neighbouring country. The tactic succeeded in identifying the hiding place of a fugitive perpetrator, and amassed the evidence necessary to have the man formally arrested by the police service of that country, prior to his extradition.

While the sometimes significant impact of personalism or voluntarism is highlighted here, as it was in our early cited examples concerning Guatemala or Brazil, there seems to be more going on here than a version, in the field of accountability, of the ‘great man’ – or woman – theory of history. Although recent Latin American accountability history does show movement or change initially associated with a handful of notable and more or less charismatic figures, the tide, and the trends, are by now sufficiently consolidated within countries and across regions to have become structurally embedded. Breakthrough case verdicts have become enshrined in subsequent jurisprudence or legislation, and the Inter-American human rights system now reflects, echoes and amplifies a region-wide trend toward increasingly widespread successful prosecution of

past atrocity crimes. Since the Inter-American system was a pioneer in introducing the right of individual petition, this change, like all the others here portrayed, also often has deep roots in, and immediate connections with, the purposive activity of relatives and survivors, whether acting in concert or alone. Thus the interplay between institutional and informal actors and spaces now spins a web of multiple threads, vertical and horizontal. Judges of the region's highest international court – the Inter-American Court of Human Rights – increasingly deal with a wide range of accountability-related matters, and in the process, become connected to individual claim makers – activists, relatives, and survivors – with or without the mediation of the lawyers or domestic justice system operators who are also part of this new, organic, and complex structure of accountability pathways.

Conclusions

We have seen how accountability actors from a range of origins, identities, age, and class backgrounds currently populate the field of accountability politics in one present-day Latin American setting. Interacting, co-operating, migrating and, sometimes, entering into conflict across and within the state or civil society spaces where each is primarily located, these actors constitute an archipelago of pro-justice activity within broader contexts that may be experienced as indifferent or hostile to their goals. Individuals within these enclaves therefore reach out to those they consider to be their peers, creating affinity groups within which to design and carry out entrepreneurial pro-accountability actions. These joint and several activities may reframe claims or demands, seek to overcome legal or political-institutional obstacles, or create 'bypass' dynamics to overcome more stubborn forms of opposition. The distinction between state and nonstate actors becomes increasingly blurred in this endeavour due to a mix of formal democratisation – creating, for the first time, the possibility of a human rights field as a state concern and a potential source of public employment – and the professionalization of a generation of human rights defenders with personal experience of repression. We have also seen that internationalisation and international life experience, while perhaps intuitively associated with younger generations, was also a factor for 'generation zero'. The exceptional experience of enforced internationalisation through exile operated, at least for some, as both a motivator to accountability action, and a source of empowerment.³³

It is among this early generation of accountability entrepreneurs that the overlap between legal activism and human rights lawyering, and the porosity of both to relatives and survivors, is more evident, though relative and survivor identities also exist among

³³ This assertion is in no way intended to counter or obscure the harm and sometimes devastation commonly wrought by exile. Rather, it faithfully records the views of some survivors that their own particular experience of exile, while painful, also offered them social, class or educational mobility; or exposure to new ideas, that they drew upon to fuel accountability activities upon their return.

the most recent of the three categories, justice system operators dedicated to accountability. Among second and subsequent generation actors in each category, the frequency of a shared experience of direct personal experience of repression diminishes and other motives, including more abstract principles of professionalism, idealism or solidarity, become more prevalent.

We have further seen how state-society alliances and mutually supportive networks are often created as a strategic resource and source of personal affirmation by individuals who feel ignored by their peers in wider society (in the case of survivors and relatives); or by their professional colleagues in still-compromised or simply mistrusted justice institutions (in the case of police personnel, for instance). In such circumstances, ideological and experiential affinities across the state-nonstate divide may be stronger than in-group identification. Hard and fast demarcations between institutions and individuals; state agencies, NGOs, and social movements; the grassroots and the formal, therefore do not adequately capture the fluidity of the accountability entrepreneur universe and its inhabitants. Acknowledgement of the existence of this universe is an invitation to disaggregate not just the state but also civil society, recognising that accountability activity is constructed and sustained across and within both spaces, and appears to be defiantly and persistently resilient.

References

Collins, C., *Post-Transitional Justice: Human Rights Trials in Chile and El Salvador*, University Park, Penn State Press, 2010.

Collins, C., 'Human Rights Trials in Chile During and After the "Pinochet Years"', *International Journal of Transitional Justice*, vol. 4 no. 1, 2010, 67-86.

Collins, C., 'Prefacio', in C. Osmo (ed.) *Judicialização da Justiça de Transição na América Latina*, PNUD/RLAJT: Brasília, 2016, 13-21.

Dezalay, Y. and B. Garth, (eds.) *Lawyers and the Construction of Transnational Justice*, London: Routledge, 2012.

González, F. *El Sistema Interamericano de Derechos Humanos*, Valencia: Tirant lo Blanch, 2013.

Osmo, C. (ed.) *Judicialização da Justiça de Transição na América Latina*, PNUD/RLAJT: Brasília, 2016

Parra Vera, O., 'La jurisprudencia de la Corte Interamericana respecto a la lucha contra la impunidad', *Revista Jurídica de la Universidad de Palermo*, 13.1, 2012

Rosenblatt, A., *Digging for the Disappeared: Forensic Science after Atrocity*, Stanford: Stanford University Press, 2016.

Salazar, K. and T. Antkowiak, (eds.), *Victims Unsilenced: The Inter-American Human Rights System and Transitional Justice in Latin America*, Washington, DC: DPLF, 2007

Sarat, A. and S. Scheingold, (eds.), *Cause Lawyers and Social Movements*, Stanford: Stanford University Press, 2006.

Skaar, E., J. García-Godos and C. Collins (eds.), *Transitional Justice in Latin America: The Long Road from Impunity toward Accountability*, London: Routledge, 2016.

Wilde, A., 'The Institutional Church and Pastoral Ministry: Unity and Conflict in the Defense of Human Rights in Chile', in A. Wilde (ed.), *Religious Responses to Violence: Human Rights in Latin America Past and Present*, Notre Dame: University of Notre Dame Press, 2015, 159-90.